

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN DANIELS,

Plaintiff,

DECISION AND ORDER

08-CV-6335L

v.

SUSAN A. CONNELL,
Superintendent of the Oneida
Correctional Facility,

Defendant.

John Daniels, the petitioner in this action for a writ of habeas corpus under 28 U.S.C. § 2254, has filed a motion seeking to remove to this Court an action that he has filed, or attempted to file, in state court.¹ Daniels contends that the Court has authority under 28 U.S.C. § 1441 to remove the state court action, because “the facts of [the state court action] has [sic] a direct bearing” on his habeas corpus action in this Court.

Section 1441 confers no such authority on the Court, however. That section provides that the *defendant* in a state court action may remove the action to federal court, under certain circumstances. The law is clear, however, that a plaintiff cannot remove his own action from state to federal court. *Hamilton v. Aetna Life and Cas. Co.*, 5 F.3d 642, 643 (2d Cir. 1993); *Duverger v.*


¹Daniels alleges that the state court “refuses to file and answer” that action, so it is not clear if it actually has been filed.

C & C Duplicators, Inc., No. 08-CV-0721, 2008 WL 1734232, at *1 (E.D.N.Y. Apr. 10, 2008). The motion is therefore denied.

CONCLUSION

Petitioner's motion to remove (Dkt. #4) is denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
September 3, 2008.